IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4711 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALKISINH IMANALLAH DULERAY GODSAN

Versus

STATE OF GUJARAT

Appearance:

MR KISHOR D PANCHAL for Petitioner

MRS SIDDHI TALATI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/04/2001

ORAL JUDGEMENT

1. This is a petition professed to be a petition under Article 226/227 of the Constitution of India at the instance of the petitioner who professes to be a "Practitioner of Naturopathy".

2. Unfortunately, the petition as presented to the court, as conceived by the petitioner and as argued by the learned counsel for the petitioner, is a complex mixture of apprehensions and misconceived notions.

3. On the one hand, it is contended that as a simple practitioner of a simple basic science in tune with nature, and professing to apply the principles of nature to the human body in order to maintain and restore good health, would not amount to "practice of medicine" within the meaning of any law applicable to such persons. On the other hand, it appears that the petitioner is bent upon calling himself as a "doctor", is bent upon professing and advertising himself as a "doctor of naturopathy", and at the same time appears to be desirous of setting up a professional educational institution for impartation of knowledge and ultimately a professional degree, whereby students who were enrolled to such an institute would be entitled to call themselves as "Doctors of Naturopathy". Unfortunately the petitioner has mixed up the two concepts viz. practice of naturopathy as against a training institute or an academic institution for Naturopathy where professional degrees would be awarded.

4. So far as the first concept is concerned, viz. "practice of naturopathy", it would appear that the same would not require any professional qualification under any law for the time being in force.

5. In this context it is relevant to consider section 2 of the Gujarat Medical Practitioners' Act, 1963, which reads as under:

> "The expression "to practice any system of medicine" with all its grammatical variations and cognate expression means to hold oneself out as being able to diagnose, treat, operate or prescribe medicines or any other remedy or to give medicine for any ailment, disease, injury, pain, deformity, or physical condition or by any advertisement, demonstration, exhibition or teaching to offer or undertake by any means of method whatsoever to diagnose, treat, operate or prescribe medicine or any other remedy or to give medicine for any aliment, disease, injury, pain, deformity or physical condition.
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> Provided that a person who:-

(i) ** ** **

(ii) ** ** **

(iii) Practice Physio-therapy or Electro-therapy or Chiropody or Naturopathy or Hydropathy or Yoga healing; or"

(iv) ** ** **

(v) ** ** **

(vi) ** ** **

shall not be deemed on that account only to practise any system of medicine."

Proviso (iii) to section 2 thereof clearly indicates that practice of physio-therapy or electro-therapy or chiropody or naturopathy or hydropoathy or yoga healing .... shall not be deemed on that account only to practice any system of medicine.

5.1 Thus, so long as a person strictly restricts himself to the application of the principles of nature, natural health and principles of naturopathy, without resorting to any other drugs, methods of diagnosis or cure by scientific instruments utilised in other medical systems of treatment, mere practice of naturopathy shall not be deemed to be practice of any system of medicine. It would, therefore, appear that the petitioner would be entitled to practice naturopathy, provided he sticks to this field and does not encroach upon any other field of treatment or cure, whereby it could be said or amount to practice of any system of medicine.

6. The other aspect of the matter is that the petitioner appears to have conferred upon himself the title of "Doctor". Admittedly, this is not a title conferred upon him by any recognised institution or authority recognised in law, nor is it result of having passed out from any lawfully recognised institution imparting knowledge and training in any field of medicine, let alone the field of naturopathy. As the petition discloses, the petitioner is merely a practitioner of naturopathy over a long period of years, and apparently on that account alone, he feels he is qualified to confer upon himself the title of "Doctor". This cannot be recognised by any court, particularly since the request in this regard is made with a view to

shield the petitioner from possible future legal action. On the petitioner's own assertion in para 3 of the petition, the only qualification claimed by the petitioner is that he is registered as a Member of the Indian Nature Cure Practitioners' Association. This name itself suggests that this is an association of persons who have come together, obviously for mutual benefit, and issue certificates of membership of the association. However, such Certificate of Membership can only be to the extent that they are members of the Nature Cure Practitioners' Association, and nothing beyond that. Mere registration as a Member, or issuance of a certificate of membership of such an institution cannot possibly amount to acquiring any particular or specific qualification, as may be required under any other law for the time being in force, and or to confer upon such a member a right to hold out, profess and declare to the world at large that he is a "Doctor". This would be misleading the public and would be a gross abuse to the science of naturopathy as well.

7. Reliance is sought to be placed upon a decision of the Calcutta High Court in the case of The Council of Alternative Systems of Medicine & Anr. Vs. State of West Bengal & Others, reported in 1991(2) Calcutta Law Journal page 173. The said decision, after having considered the scope and effect of Indian Medical Council Act, 1956 and Indian Medical Degrees Act, 1916, particularly considers the scope and effect and application of the system of therapy popularly known as "Naturopathy". In this context it was laid down that "alternative systems of medicine" would include a system devoid of medicine made by chemicals. It is the system to obtain a cure by controlling diet, the senses and breathing. If any disease is cured by the practice of Yoga, it cannot be said that such a system contravenes any of the provisions of law as it is no offence to obtain training in Yoga and/or to advise people how to correctly follow the system of Yoga. In short, the system of medicine which is devoid of any therapy by chemicals or drugs, and where the human body system is assisted to obtain a cure by controlling diet, the senses and breathing, does not contravene any statute. However, as already noted hereinabove, the definition "to practice any system of medicine" as found in section 2 of the Gujarat Medical Practitioners' Act, 1963, defines that the practice of naturopathy ipso facto shall not be deemed on that account only, to be a practice of any system of medicine.

8. It would, therefore, appear that so long as the

petitioner confines himself to the practice of Naturopathy, and the application of the principles thereof, and does not resort to drugs, chemicals and practices which are followed, applied and practiced in other professional systems of medicine, such practice in itself would not be violation of any law.

9. The position, however, is different when the petitioner, by way of alternative submissions made in the petition (albeit by a very confused presentation of his own desire) submits that he is also entitled to create, establish or run an institution such as an Institute of Naturopathy or some such organisation, where professional training is imparted to the students of such institution, confer some sort of degree on those students who are successful, and to confer upon such successful students some sort of certificate or degree whereby they can call themselves "Doctors". Such a situation at best must remain in the realm of desire of the petitioner. If at all such a system of training can be set up by a recongised institute for the purpose, it is for the petitioner to approach the appropriate authorities under the appropriate scheme of legislation and to obtain the necessary recognition and/or affiliation as may be required under the appropriate law. It is not for the court to educate the petitioner as to how the petitioner's desires can be achieved, inasmuch as this court does not exercise advisory jurisdiction.

10. Even otherwise, when the prayers made in the petition are considered, it is found that paragraph 14(B) seeks a writ or direction of this court "for quashing and setting aside the interrogatory activity of respondent nos.1 and 2 to carry on the petitioner's business of "Naturopathy Doctor". In this context it is sufficient to observe that if the appropriate investigating authority such as the police go about their lawful business in investigating an FIR which may have been lodged, and if for this purpose an inquiry is made with the petitioner as to the legal right of the petitioner to describe himself as a "Doctor", mere investigation of this nature cannot be quashed and set aside. In any case, no specific grievance has been made in the petition that the petitioner is facing any criminal charges for "practice of naturopathy". It is a very different thing, if in future, the petitioner is required to face charges for holding himself out as a qualified doctor, by using the phrase "Doctor" as a prefix to his name, suggesting that he is a qualified practitioner, and recognised as such, by an appropriate statute as a "Doctor of Naturopathy".

11. Prayer "C" made in the petition does not require any further consideration in view of the affidavit in reply filed by the Under Secretary, Health and Family Welfare Department. The petitioner has prayed that if at all any registration is required so far as doctors of naturopathy are concerned, the Nisargopachar Board may be issued directions to grant such registration, and also to grant recognition to the institute of naturopathy (?), "which are running at present without any registration". From this prayer it would appear that the petitioner requires the court to issue directions to the concerned respondents that teaching and/or academic institutions imparting professional training in naturopathy should be granted recognition, so that the graduating students who may turn out can legitimately be called "Doctors". However, the respondents point out that Nisargopachar Board is currently not active in the field, but the functions thereof are being handled by the Gujarat Board of Ayurvedic and Unani System of Medicines, Gujarat State.

12. In the context of prayer (C) it merely requires to be noted that the Gujarat Ayurved University Act, 1965 establishes "The Gujarat Ayurved University". Section 2, subsection (4) defines "Ayurvedic system of medicine" which includes the Nisargopachar system. Section 27 deals with affiliation, recognition and approval of colleges applying for affiliation to the University (for the broader purpose of conducting the necessary courses to impart instruction in Nisargopachar) and all questions incidental to the recognition of such institutes and all consequential academic and administrative requirements. In other words, if the petitioner is serious as regards his intention to set up a College for Naturopathy, it would appear that the aforesaid legal remedy is available to him under the appropriate statute provided he makes the necessary application, as the first step in that direction. However, unless the petitioner moves and conducts himself in the appropriate and prescribed manner and satisfies the necessary technical, administrative and procedural formalities, this is just not possible unless the petitioner applies. This court has neither the power nor the jurisdiction to give any mandate in the matter. It is open to the petitioner to take recourse to such provisions as aforesaid and/or any other provisions that may be applicable to the facts of the case.

13. In the premises aforesaid, I find that there is no prayer made which can be granted. There is therefore no substance in the present petition and the same is

accordingly dismissed. Notice is discharged with costs.

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